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THE MARTHA'S VINEYARD COMMISSION

BOX 1447
OAK BLUFFS
MASSACHUSETTS
02557
617-693-3453

DATE: May 17, 1984

TO: Conservation Commission of the Town of Oak Bluffs

FROM: Martha's Vineyard Commission

SUBJECT: DEVELOPMENT OF REGIONAL IMPACT
RE: CONSTRUCTION OF PRIVATE PIER

APPLICANT: FARM NECK ASSOCIATION

DECISION OF THE MARTHA'S VINEYARD COMMISSION

SUMMARY

The Martha's Vineyard Commission (the "Commission) hereby approves with certain conditions the Application of the Farm Neck Association Inc., c/o G.L. Wey, Engineering, Oak Bluffs, Massachusetts for the construction of a private pier on Sengenkontacket Pond in the Town of Oak Bluffs, as shown on the plans entitled: "Proposed Pier in Sengekontacket Pond for Farm Neck Association - Oak Bluffs, G.L. Wey, Engineering Consultants, February, 1984, consisting of one sheet, (the Plan).

The decision, with conditions contained herein, is rendered pursuant to the vote of the Commission on May 17, 1984. The Conservation Commission of the Town of Oak Bluffs may now grant the necessary development permits for the Applicant's proposed development in accordance with the conditions contained herein, or may approve in accordance with the conditions contained herein and place further conditions thereon, or may disapprove the development application.

FACTS

The proposed development is a Development of Regional Impact as defined by the Commission's Criteria and Standards, Developments of Regional Impact, Section 3.502. The application was referred to the Commission by the Conservation Commission of the Town of Oak Bluffs for action pursuant to M.G.L. Chapter 831, Acts of 1977, as amended

(the Act). The Application and notice of public hearing relative there to are incorporated herein.

A duly noticed public hearing on the Application was conducted by the Commission pursuant to the Act and Massachusetts General Laws, Chapter 30A, Section 2, on March 15, 1984 at 8:00 p.m. at the Commission offices, Olde Stone Building, New York Avenue, Oak Bluffs, Massachusetts. The proposal is for the construction of a private pier on Sengekontacket Pond, Oak Bluffs.

Marc Widdiss, Chairman of the Land Use Planning Committee opened the public hearing at 8:00 p.m. by reading the legal notice of the hearing and called for testimony.

Carol Borer of the Commission staff made a presentation to familiarize the Commission with the project using an aerial photo and proposed plan of pier as well as a series of aerial slides of area and surrounding land uses. She distributed a memo that had been given to the Land Use Committee which contained a number of points and concerns which could be considered; an explanation of the memo followed. She briefly discussed the meetings that the LUPC had had on this matter, as well as noting that some of the issues or concerns were purely a local matter and could only be addressed on that level.

Mr. Widdiss called for proponents. Mr. Tim Sweet, Secretary of the Farm Neck Association, Inc. spoke for the proposal. He indicated that the pier would be for the convenience of Association members and that it would not be used for docking but rather as a pick-up, drop-off spot. He discussed the pier length and noted that the engineer had indicated that such a length would be necessary to reach a depth of 2½ feet at low tide. He further discussed the issue of a permanent pier vs. floating pier and indicated that floating ones were more expensive to remove and were perhaps less aesthetic than permanent types.

In answer to a question from the Commissioners, Mr. Sweet responded to each of the items as found in Alternative #2 of memo which had been distributed. A discussion followed regarding what was meant by a pile driver, what type of equipment might be used and the different methods that might be used in construction, i.e. jetting vs. hammering.

The length of the pier was discussed, including alternatives and depth requirements.

A number of suggestions were put forth regarding length, construction method, resource damage and the use of the pier for tie-up vs. moorings elsewhere.

Mr. Widdiss called for opponents. Robert Culbert of the Oak Bluffs Conservation Commission identified himself as not being opposed but more in a middle ground. He expressed some concerns that the Oak Bluffs Conservation Commission would be addressing such as no adverse affects to shellfish, a concern over access to pier and the fact that the town needed to develop a management plan for the pond. He indicated that Edgartown and Oak Bluffs would be discussing the needs of such a management plan and the items that might be included such as speed and horsepower of boats, numbers of docks and moorings. He further discussed the issues related to wildlife areas and water quality. When asked, he felt that the majority of issues related to the pier had been addressed in the memo or during the meeting. He indicated that the Town was working toward some sort of By-law which would be related to the use of the pond. When asked, he indicated that a public hearing would be held by the Conservation Commission and that an Order of Conditions would be issued.

A discussion of moorings and their location vs. use of pier for tie-ups followed. Mr. Sweet indicated a potential of 48 homes maximum as users and that there were three or four boats moored in the area last year. He stated that no regulations related to pier usage had yet been developed. A discussion of the use of moorings and the space thus needed vs. use of pier for tie-up and better management control, less damage to the area, followed. Mr. Sweet indicated that Farm Neck had been led to believe that the life of the pier would be greater with no tie-ups allowed and that was why they had said no permanent tie-ups to the pier.

A question was raised as to the potential of a precedence being set if this permanent pier was permitted vs. others that may come in later. Mr. Widdiss did not feel that a precedence would be set but that it would be a good question to think about and discuss.

There being no further questions or discussion, Mr. Widdiss closed the public hearing at 8:45 p.m.

FINDINGS and CONDITIONS

The Commission has considered the Application and the information presented at the public hearing, and based upon such consideration, makes the following findings pursuant to Section 14 of the Act:

a. The Commission finds that the probable benefits of the proposed development, subject to the conditions set forth herein, will exceed the probable detriments of the proposal in light of the considerations set forth in Section 15 of the Act.

b. The Commission finds that the proposed development will not interfere substantially or unreasonably with the achievement of the objectives of any general plan of the Town or of Dukes County.

c. The Commission finds that the proposed development as set forth in the Application and the Plan will be consistent with local development ordinances and by-laws.

d. The Commission finds that the development proposal will be more beneficial than detrimental when compared to alternative manners of development or developments occurring in alternative locations.

The Commission has considered the question of potential impact and damage to the salt marsh adjacent to the proposal. The Commission believes that, based on evidence presented, a single private pier will have less detrimental impact upon the salt marsh than would the alternative of people dragging small boats out of the water and through the marsh area, or of the removal annually of a floating pier which would again necessitate the dragging of objects through the marsh area.

The Commission has considered the question of future impact upon the Sengekontacket Pond area the the potential damage that might result from such an impact. In order to minimize to the greatest extent possible those impacts, the Commission sets the following conditions:

THERE SHALL BE NO DREDGING IN THE AREA OF THE PROPOSED CONSTRUCTION ACTIVITY AND SHOULD FARM NECK ASSOCIATION EVER CONSIDER THE POSSIBILITY OF DREDGING ACTIVITY, SAID ASSOCIATION MUST FIRST RECEIVE PERMISSION FROM THE COMMISSION, AND THAT ANY CONSTRUCTION EQUIPMENT NECESSARY TO THE CONSTRUCTION OF SAID PIER (I.E. PILE DRIVER OR THE LIKE) SHOULD BE BROUGHT TO THE SITE VIA WATER AND NOT OVER LAND.

Further the Commission sets the following conditions:

THERE SHALL BE NO PARKING NOR THE PROVISION FOR PARKING ALONG THE ACCESS PATH BETWEEN THE PROPOSED PIER AND ANTHIER'S LAND, NOR SHALL SAID ACCESS PATH BE INCREASED IN WIDTH OR LENGTH THAN IS CURRENTLY IN PLACE.

Further:

THE PIER, AS PROPOSED, SHALL BE LIMITED IN USE TO THOSE MEMBERS OF THE FARM NECK HOMEOWNERS ASSOCIATION AND AT NO TIME SHALL SAID ASSOCIATION GRANT USE BY EASEMENT TO ANY PRIVATE INDIVIDUALS OR OTHER HOMEOWNERS ASSOCIATION.

Further:

THE PIER, AS PROPOSED, SHALL BE THE SINGLE POINT OF ACCESS TO SENGEKONTACKET POND FOR THE MEMBERS OF THE ASSOCIATION AND THERE SHALL BE NO CONSTRUCTION OF ANY ADDITIONAL PIERS, PERMANENT OR FLOATING, WITHOUT FURTHER RECEIPT OF APPROVAL FROM THE COMMISSION.

Further:

IN ORDER TO PREVENT ANY CONFLICTS BETWEEN THE EXISTING SHELLFISH BEDDING AREAS THAT MAY BE IN CLOSE PROXIMITY TO THE PROPOSED CONSTRUCTION SITE, NO CONSTRUCTION SHALL BE PERMITTED BETWEEN JUNE 1 AND OCTOBER 1 AND THAT THE ASSOCIATION SHALL NOTIFY THE SHELLFISH WARDEN OF THE TOWN OF OAK BLUFFS AT LEAST TWO WEEKS PRIOR TO THE START OF CONSTRUCTION SO THAT SAID WARDEN MAY MAKE A DETERMINATION AS TO WHETHER AN ATTEMPT TO MOVE ANY EXISTING SHELLFISH THAT MAY BE IN THE AREA OF THE CONSTRUCTION WOULD BE MADE.

This Decision should not be construed as a precedence for any future applications of a similar nature in Sengekontacket Pond.

The Commission finds that the proposed development is consistent with local ordinances and by-laws to the extent it is required to only the Application being before it at this time. The Applicant must, consistent with the decision, apply to the appropriate Town of Oak Bluffs officers or boards for any other development permits which may be required together with any other development permits required by law.

The Commission approves the Town of Oak Bluffs officials granting applicable development permits.

This Decision is written consistent with the vote of the Commission:

Any party aggrieved by a determination of the Commission may appeal to the Superior Court within twenty days after the Commission has sent the development Applicant written notice, by certified mail, of its decision and has filed a copy of its decision with the Town Clerk of the town in which the proposed development is located.

Leonard Jason Jr., Chairman — Date: 5/17/84

Norman Friedman
Notary — Date: 5/17/84

NORMAN FRIEDMAN
NOTARY PUBLIC
My commission expires Nov 2, 1990

Edgartown, Mass. May 21 1984
at 10 o'clock and 31 minutes A M
Received and entered with Dukes County Deeds
book 415 Page 155

Attest: Beverly W. King
Register